

THE EFFECTIVE DATE OF THIS RESOLUTION IS _____

RESOLUTION NO. _____

Re: Authorization to Sell Citizens Nursing Home and Montevue Assisted Living

PREAMBLE AND FINDINGS OF FACT

In 1826, the Maryland General Assembly authorized the Levy Court of Frederick County (the predecessor to the Board of County Commissioners) to purchase land for the benefit of the poor. Chapter 48 of the Laws of Maryland of 1825 authorized the Frederick County government to purchase a tract of land and to build on such land a house for the benefit of the poor (i.e., a “poor house”) on the condition that the tract of land not exceed 100 acres and the price paid not exceed \$12,000. Chapter 48 further authorized the County to sell its existing “poor house” and directed that any persons living in the newly built facility for the poor would work the land as a farm and return any proceeds from the sale of farm products to the County.

Pursuant to the authority granted the County by Chapter 48 of the Laws of Maryland of 1825, Frederick County purchased from Elias Brunner certain property described in a deed recorded on September 2, 1828 (the “1828 Deed”). The 1828 Deed included language that the transfer of the property was for “the Benefit of the Poor” consistent with the legislative intent of the scope of the project as described in Chapter 48 of the Laws of Maryland of 1825. Specifically, the 1828 Deed noted that the County was purchasing from Brunner “under and by virtue of an Act of Assembly passed at December Session 1825, Chapter 48, a certain tract or parcel of land, for the use and

Benefit of the Poor of Frederick County.” The 1828 Deed transferred from Brunner approximately 88 acres of land (with certain improvements) for a purchase price paid by the County of \$5,313.75.

In 1912, the Maryland General Assembly authorized Frederick County to sell the “Montevue Hospital” and the farm upon which it was located. Chapter 678 of the Laws of Maryland of 1912 authorized the County to sell Montevue Hospital and the land upon which it was located (together with all buildings and improvements). Chapter 678 further directed the County to apply any proceeds from the sale in the following sequence: first, to pay the bonded indebtedness of the Montevue Hospital; second, to pay any indebtedness of the Board of Charities and Corrections for Frederick County arising from the support of any patients/inmates at Montevue; and lastly, any remaining balance for the purchase of land/buildings suitable for the support of the poor by the County. Chapter 678 is currently codified at Section 2-2-22 of the Frederick County Code.

The Board of County Commissioners of Frederick County, Maryland (“BOCC” or “County”) owns and operates the Citizens Care and Rehabilitation Center (“CCRC”) and Montevue Assisted Living (“MAL”) facilities located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702.

CCRC is a 170 bed comprehensive care facility. The Maryland Health Care Commission issued a Certificate of Need to the BOCC for this 170 bed comprehensive care facility on July 17, 2008.

MAL is a 75 unit assisted living facility licensed by the Maryland Department of Health and Mental Hygiene.

Maryland State law, Article 25, § 254 of the Maryland Annotated Code, specifically authorizes the BOCC to “establish, maintain, and operate a nursing or convalescent home or homes and any other facilities and services for the proper care and treatment of the aged, convalescent, and chronically ill.”

The BOCC is authorized to sell at a public or private sale any real property it owns, if the BOCC:

- determines that the property is no longer needed for any public use and
- provides adequate notice and a hearing on the sale of the real property.

Md. Annotated Code, Article 25, § 11A(b)(3-1) and § 2-2-21.1(b)(3)(iv) of the Public Local Laws of Frederick County.

The Public Local Laws of Frederick County, specifically Frederick County Code § 2-2-22, also authorizes the BOCC to sell this property.

The CCRC and MAL facilities are located on a portion of land the County acquired through the 1828 Deed. Chapter 48 of the Laws of Maryland of 1825 authorized the County to purchase the land upon which the CCRC and MAL facilities are located and to build a facility to serve the poor. Chapter 678 of the Laws of Maryland of 1912 authorized the County to sell the Montevue Hospital and the land upon which it was located (together with the buildings and improvements) and apply the proceeds as directed.

During a public meeting on October 25, 2012, the BOCC authorized the exploration of options available to eliminate the subsidies to CCRC and MAL from the FY 2014 budget, including the privatization and sale of CCRC and MAL. In exploring

the sale of these facilities, proposals to purchase the facilities were sought from independent operators of skilled nursing and assisted living homes.

Six proposals were received in response to this request for proposal process. After a thorough and comprehensive review and negotiation process, the proposal from Aurora Holdings VII, LLC, a Maryland limited liability company (“Aurora”) to purchase the facility is recommended.

The Frederick County General Fund subsidies to CCRC and MAL since FY 2000 exceed \$53 million as shown by the following table:

**General Fund Subsidies to Citizens Care and Rehabilitation Center(CCRC) and
Montevue Assisted Living (MAL)
For Fiscal Years 2000-2013**

<u>Fiscal Year</u>	<u>CCRC Subsidy</u>	<u>MAL Subsidy</u>	<u>Total Subsidy</u>
2000	1,005,574	850,881	1,856,455
2001	1,137,281	949,298	2,086,579
2002	832,499	1,036,269	1,868,768
2003	1,279,613	1,162,046	2,441,659
2004	1,843,738	1,209,551	3,053,289
2005	1,818,643	1,007,892	2,826,535
2006	1,933,970	1,545,848	3,479,818
2007	1,960,016	1,767,962	3,727,978
2008	3,249,091	2,138,475	5,387,566
2009	3,087,136	2,104,749	5,191,885
2010	4,270,100	2,290,445	6,560,545
2011	2,637,220	2,311,169	4,948,389
2012	3,201,892	2,770,954	5,972,846
2013*	1,678,665	2,512,022	4,190,687
Total	<u>\$29,935,438</u>	<u>\$23,657,561</u>	<u>\$53,592,999</u>

*Budget amount

These general fund subsidies were necessary to cover a deficit between the revenue generated by CCRC and MAL and the expenditures incurred for CCRC and MAL during each fiscal year.

The County incurred bonded indebtedness in excess of \$37 million to finance the construction of the CCRC and MAL facilities.

The money received from the sale of the CCRC and MAL facilities will be placed into escrow to pay this bonded indebtedness at such times in the future when the respective terms of the bonds allow for this redemption.

The money received from the sale of the CCRC and MAL facilities will not be adequate to pay all of the bonded indebtedness the County incurred to finance the construction of the CCRC and MAL facilities.”

A duly advertised public hearing was held on June 25, 2013 to consider the sale of the CCRC and MAL facility. The public had an opportunity to comment on the proposal.

After a thorough and comprehensive evaluation of all factors, the BOCC desires to accept the proposal from Aurora and sell the CCRC and MAL facility to Aurora.

NOW, THEREFORE, BE IT ENACTED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND:

Section 1. Each of the provisions of the “Preamble and Findings of Fact” above, is hereby adopted as a specific Finding of Fact by the Board of County Commissioners.

Section 2. That, pursuant to all applicable state law, it is hereby found and determined as follows:

- (i) the property is no longer needed for any public use;
- (ii) continued operation of the CCRC and MAL facilities by the County is no longer in the public interest due to the significant General Fund dollars expended by the County to subsidize the operation of these facilities;
- (iii) the acceptance of the Aurora proposal and the sale to Aurora will promote the health, welfare and safety of the residents of Frederick County;
- (iv) adequate notice and a hearing on the sale of the property have been provided.

Section 3. Pursuant to the authority of all applicable provisions of State Law, the County hereby approves the sale of CCRC and MAL to Aurora at a price of \$30 million as adjusted, pursuant to the Asset Purchase Agreement to be substantially in the form attached hereto as Exhibit A (the "Asset Purchase Agreement"). Such acquisition shall be accomplished generally in accordance with the provisions of the Asset Purchase Agreement. The Asset Purchase Agreement shall be in substantially the form set forth in Exhibit A attached hereto and made a part hereof.

Section 4. The Asset Purchase Agreement shall be executed in the name of the County by the President or Vice President of the Board. The corporate seal of the County

shall be affixed to the Asset Purchase Agreement and attested by the signature of the County Manager.

The execution of the Asset Purchase Agreement by such officer shall be conclusive evidence of the due execution of the Asset Purchase Agreement by the County.

Section 5. The President and Vice President of the Board, the County Manager, the County Attorney, the Director of Finance, and such other officers, officials and employees of the County as the President or the Vice President shall designate, are hereby authorized to do any and all things, execute all instruments, documents, certificates and otherwise take all actions necessary, proper or expedient in connection with the Asset Purchase Agreement and the sale of the CCRC and MAL facilities.

The County Manager is hereby authorized to fill in any blanks in the documents which may require completion after the signing thereof, to sign any settlement sheet on behalf of the County, and to make any and all other necessary changes, additions or modifications thereto (including but not limited to any changes to the dates thereof) so long as the substance of such documents is not materially altered thereby.

Section 6. The County shall apply the monies received from the sale of the property consistent with the purposes authorized in Frederick County Code § 2-2-22 (Chapter 678 of the Laws of Maryland of 1912).

Section 7. This Resolution takes effect from the date of its adoption.

The undersigned hereby certifies that this Resolution was approved and adopted
on the ____ day of _____, 2013.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

Lori L. Depies, CPA
County Manager

By: _____
Blaine R. Young, President